

Aukerman Plumbing, Inc. a wholly owned subsidiary of Paragon Development Enterprises, Inc. and Local Union No. 447 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Case 20-CA-24523

November 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Local Union No. 447 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint against Aukerman Plumbing, Inc. a wholly owned subsidiary of Paragon Development Enterprises, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On October 26, 1992, the General Counsel filed a Motion for Summary Judgment. On October 30, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 22, 1992, notified the Respondent that unless an answer was received by September 30, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Redding, California, has been engaged as a plumbing contractor in the construction industry. During the calendar year ending December 31, 1991, the Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the State of California and/or from other enterprises, including P. E. O'Hare, located within the State of California, each of which other enterprises had received the goods directly from points outside the State of California. During the calendar year ending December 31, 1991, the Respondent provided services in the State of California valued in excess of \$50,000 for Sundt Corporation, an enterprise located within the State of Arizona. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work and/or with job classifications that are covered by the terms of the collective bargaining agreement between the Union and the Associated Plumbing and Mechanical Contractors of Sacramento Incorporated, effective by its terms from July 1, 1989 through June 30, 1992.

About July 17, 1991, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the employees in the unit by entering into a collective-bargaining agreement with the Union for the period May 28, 1991, through June 30, 1992, without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act. The collective-bargaining agreement covered the terms and conditions of employment of the employees of the unit. At all times since about July 17, 1991, the Union has been the limited exclusive collective-bargaining representative of the employees of the unit pursuant to Section 9(a) of the Act.

Beginning September 1991, the Respondent failed to honor the terms and conditions of its agreement with the Union by failing to make pension fund contributions for the employees in the unit. The Union did not and could not be reasonably expected to know about the Respondent's conduct until about October 16,

1991. The Respondent engaged in the conduct without the Union's consent. The pension fund contributions are a mandatory subject for the purposes of collective bargaining.

CONCLUSION OF LAW

By failing to honor the terms of its collective-bargaining agreement with the Union by failing to make pension fund contributions, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments for pension, we shall order the Respondent to make whole the employees by making all payments to the pension fund that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. d. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Aukerman Plumbing, Inc. a wholly owned subsidiary of Paragon Development Enterprises, Inc., Redding, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms of its collective-bargaining agreement with Local Union No. 447 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO by failing to make contractually required pension fund contributions for the employees in the unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of its collective-bargaining agreement with the Union by making all contractually required pension fund contributions, and making its employees whole for the failure to make all contractually required pension fund contributions, with interest, in the manner set forth in the remedy section of the Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Redding, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor the terms of our collective-bargaining agreement with Local Union No. 447 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, the limited exclusive bargaining representative of our employees in the following appropriate unit, by failing to make all contractually required pension fund contributions:

All employees performing work and/or with job classifications that are covered by the terms of the collective bargaining agreement between the Union and the Associated Plumbing and Mechan-

cal Contractors of Sacramento Incorporated, effective by its terms from July 1, 1989 through June 30, 1992.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all contractually required pension fund contributions for the employees in the unit.

WE WILL make our unit employees whole for our failure to make all contractually required pension fund contributions, plus interest.

AUKERMAN PLUMBING, INC. A WHOLLY
OWNED SUBSIDIARY OF PARAGON DE-
VELOPMENT ENTERPRISES, INC.